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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN FRANCISCO DIVISION

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19
20 UNITED STATES OF AMERICA,) CR 14-00175 TEH
21 Plaintiff,)
22 v.) UNITED STATES' RESPONSE TO
23) DEFENDANT'S MOTIONS REGARDING
24) EVIDENCE ADMITTED THROUGH WITNESS
25) MANEGOLD, DOCKETS 733 AND 734
26 PACIFIC GAS AND ELECTRIC COMPANY,)
27 Defendant.) Judge: Hon. Thelton Henderson
28) Date: July 11, 2016
29) Time: 4:00 p.m.
30) Place: Courtroom 2, 17th Floor

31 I. INTRODUCTION

32 In its two midnight filings, defendant Pacific Gas and Electric Company (“PG&E”) asks the
33 Court to revisit prior evidentiary rulings after review of the transcript. This is exactly what the Court
34 forbade the parties to do. The Court should strike these unauthorized motions. Only twenty-two lines of
35 one of the motions (Dkt. 733) addresses the topic on which the Court authorized briefing, but does so in
36 such a cursory way that it does not allow for a detailed response by the government.

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40 ADMITTED THROUGH WITNESS MANEGOLD, DOCKETS 733 AND 734
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II. ARGUMENT

A. The Court Should Strike the Motions As Unauthorized, Except Section C.2 of Docket 733

3 The Court carefully reviewed and made evidentiary rulings about the admissibility of exhibits
4 through government witness Manegold. Dkt. 724, 725, and 728. The government followed those
5 rulings and accordingly admitted exhibits through Manegold. Now defendant, in midnight filings, asks
6 the Court to revisit these rulings. Additionally, the Court made rulings on the admissibility during
7 Manegold's testimony. Two or three days after the rulings, upon reading the transcripts and additional
8 arguments, PG&E asks the court to revisit those rulings. These objections should not be considered
9 either because they were already ruled upon by the Court, or because they were not raised at the time
10 evidence was admitted.

11 The sole issue that PG&E asked to be able to brief involved what PG&E could ask on cross-
12 examination of Manegold:

I haven't had a chance to talk to my team about this, but as I'm looking at these documents coming in, I think I'd like permission to file a short brief for you to read on Monday, as I -- as I try to be clear on what I can ask and what I can't ask related to San Bruno. I don't want to -- I know if I ask a question, the Government is going to say: You've opened the door. And so I don't want to have that fight from a position of weakness.

16 Trial Tr. Vol. 17 at 2556:15-22. The Court then held that this “short brief” regarding what the defense
17 “can ask and what [PG&E] can’t ask related to San Bruno” should be filed by the end of the day Sunday,
18 so the government may respond in writing, if it chooses, by noon Monday. Trial Tr. Vol. 17 at 2557:7 –
19 2558:22. Instead of filing a short brief regarding what PG&E can and cannot ask relating to San Bruno,
20 PG&E file two motions, an 18-page motion to strike admitted evidence and a 9-page motion for limiting
21 instruction.

22 This Court has repeatedly stated during trial that it would not revisit prior rulings it had made
23 after the fact. Beginning on June 21 2016, the Court said, “moving forward, I expect counsel to make
24 their objections to questions or testimony in court, not after a review of the transcript of the day's
25 proceeding in the evening. And I will not entertain such objections hereforth.” Trial Tr. Vol. 6 at
26 704:15-19. On June 24, 2016, this Court stated, “I simply cannot permit the parties to take a second bite
27 of evidentiary objections because they do not like the outcome of my rulings.... moving forward you're

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1 on notice that I expect all evidentiary objections to be made at the time I hear objections to that
 2 particular exhibit.” Trial Tr. Vol. 9 at 704:3-18. On June 28, 2016, the Court stated, “I’ve previously
 3 ruled, as you know, that I will not entertain objections to questions or testimony made after we have a
 4 review of the daily trial transcript, and I’ve every intention of holding the parties to that ruling and
 5 enforcing it.” Trial Tr. Vol. 10 at 704:19-23. On June 29, 2016, the Court stated, “I am not revisiting. I
 6 am so confident of my rulings. You guys want to -- and you’re trying to reframe -- not you, both of you
 7 are trying to reframe rulings, call it something else. And I’m going to speak to that later. I’m tired of
 8 ruling on this.” Trial Tr. Vol. 11 at 12-16. Most recently, on July 7, the Court said, “And I will rule on
 9 this. We won’t pour over the transcript tonight and come up with new. This is it.” Trial Tr. Vol. 16 at
 10 2423: 24-25.

11 PG&E did exactly what the Court forbade: it spent the weekend reviewing the transcript,
 12 reframing, and creating new objections. PG&E’s unauthorized motions should be denied outright.

13 **B. The Court Should Deny Defendant’s Motion for Limiting Instruction and Other Relief**

14 **1. The Government Has Not Improperly Suggested Causation**

15 PG&E delineates new objections to government exhibits and direct examination questions as to
 16 its longtime employee, William Manegold. All are baseless.

17 Exhibit 615

18 Exhibit 615 is an email in which Calvin Lui forwarded Manegold’s draft white paper “MOP 10%
 19 Allowance” to Manegold, a few days after the NTSB investigation began. The government asked
 20 Manegold why Lui was forwarding it. While it did not know the answer Manegold would give –
 21 because current and former PG&E employee-witnesses have refused to meet with the government to
 22 discuss anticipated testimony, the government has had to ask many questions as to which it does not
 23 know the answer – it expected that the answer might relate to the existence of the NTSB investigation.
 24 As this Court knows, PG&E’s concealment of its 10% allowance in the NTSB investigation is a
 25 significant part of the government’s evidence for Count One. Count One alleges that PG&E obstructed
 26 the NTSB investigation of the San Bruno explosion and PG&E’s Integrity Management program.

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Exhibit 649

Defendant complains that the government “elicited testimony about a number of executives above Mr. Manegold and Ms. Peralta in the organization,” and that the “only reason to ask these questions was to imply that PG&E engineers and senior executives must have believed the planned pressure increases were inappropriate.” Mot. at 5.

To the contrary, the government sought to – and did – elicit that:

- (1) Mangold sent the 10% version of RMI-06 to his boss, Sara Peralta, who as PG&E’s Manager of Integrity Management had approval authority over RMI-06 at the time; and
- (2) According to the email that Peralta forwarded to Manegold, her boss and PG&E’s Director of IM, Bob Fassett, wanted it to discuss with PG&E’s Executive Vice President of Engineering and Operations, Ed Salas.

The jury can and should reasonably infer that PG&E’s upper echelons of management knew that PG&E engaged in the 10% practice that they subsequently disavowed to the NTSB. This evidence demonstrates respondeat superior liability (as well as corporate collective knowledge culpability).

Exhibit 717

Defendant complains that Exhibit 717 is a presentation of post-accident evaluations prejudicially suggesting that the procedures caused the explosion. Not so. This exhibit is direct proof of the following points, among others:

- (1) PG&E used GIS to identify HCA segments with manufacturing threats. (Exh. 717-004.) PG&E is charged with failing to gather and integrate data. PG&E has sought to show that GIS was merely a starting point. This exhibit is relevant to show that PG&E did in fact rely on GIS, which witness and documentary evidence has shown PG&E knew to contain erroneous and incomplete data, to make integrity management decisions. Further support comes from the exhibit’s concession that PG&E could not locate job files or job files could not confirm GIS data. (Exh. 717-007, n.1.)
- (2) PG&E identified HCAs beginning (at latest) in 2003. (Exh. 717-004.) PG&E has sought to show that it did not identify HCAs until 2004, for the purpose of arguing that its

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12/2003 overpressure on Line 132, raising the pressure over the MAOP of 400, was not
an overpressure and provides a loophole under 49 C.F.R. § 192.917(e).

(3) There were 16 exceedances over 5 year MOP, between 2003 and 2010, on 46.5 HCA miles of pipeline, including on charged lines 107, 109, and 132. (Exh. 717-005, 018-20.) These occurred during intentional pressure increases. (Exh. 717-002.) The evidence will continue to show that there were numerous exceedances during unintentional pressure increases.

Exhibit 622

Defendant complains that the government improperly suggested that through Exhibit 622 that PG&E's evaluation of GIS was a result of the San Bruno explosion. But the government just walked Manegold through the email, which states in part that "the timing is key." The most relevant part of this email is that PG&E is building a "pipeline features list" (PFL), which other exhibits demonstrate identified numerous significant errors in GIS.

Q Okay. And he says that the timing is key?

A That's what he says, yes.

Q Okay. And you said that PFL refers to a pipeline features list, which is all the pipe data?

A Correct.

Q And they say that they are currently building it, correct?

A That's what it says.

Q And are you aware whether the pipeline features list was, in fact, built?

A I believe it was.

Q Did you have any involvement in it at all?

A I don't believe so.

Q Did you ever look at that pipeline features list?

A I looked at some of the work that was going on. They set up a big room to do the work and I looked at some of it, but I don't think I -- I don't know if I saw the completed product or not.

Q Are you aware, one way or another, whether that built pipeline features list recognized numerous errors in GIS?

A Since I didn't see the final list, I don't know that.

Q You don't know that?

A It wouldn't surprise me, but I -- I didn't see the features list, so I can't tell you.

Trial Tr. Vol. 17 at 2514:17-2515:14.

Exhibit 756

Defendant complains that the government offered this exhibit to suggest that Manegold's white paper was unlawful and required review by outside counsel. Wrong. As the government told the Court

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1 in responding to PG&E's multitude of objections to exhibits containing PG&E's own statements: "This
 2 is an email from Calvin Lui copying Manegold, forwarding Manegold's May 2010 white paper on the
 3 10% allowance, subject 'seam weld threat.' It is probative of PG&E's cognizance that this 10%
 4 allowance was an issue at the time of the NTSB investigation." Six or seven weeks later, PG&E
 5 misleadingly communicates to the NTSB that this 10% allowance was never PG&E's practice.

6 **Other Objections**

7 PG&E also complains that the government queried PG&E employee-witnesses about certain
 8 practices before and after 2010/2011. But the Court has deemed admissible that PG&E failed to
 9 disclose its 10% practice to PHMSA, that hydrotesting occurred after 2011, and that an employee-
 10 witness spoke with lawyers about RMI-06 in March 2011. Trial Tr. Vol. 12 at 1756:13 – 1758:4; Vol.
 11 13, 1964:6-14.

12 **2. The Court Should Deny PG&E's Requested Limiting Instruction**

13 There has been no error, and no basis for the proffered instruction. Moreover, defendant's
 14 proposed instruction, even omitting the first paragraph improperly suggesting government error, is
 15 misleading at best. As this Court has already recognized, the jury may consider evidence after the time
 16 of the allegations to the extent it tends to prove facts of consequence during the time of the allegations.
 17 For example, the pipeline features list, created after the explosion, proves that there was in fact a large
 18 amount of data that was not gathered and integrated into GIS, the utility's primary source for IM
 19 decisions.

20 **3. Defendant May Open the Door**

21 PG&E's 22 lines about the only authorized topic for a motion do not contain detail to allow a
 22 substantive response. PG&E contends that it should be permitted to "present some evidence about its
 23 investigations and program reviews following the San Bruno rupture," and that this should not open the
 24 door to any additional evidence about the explosion. Dkt. 733 at 8. It further argues that any evidence it
 25 "may need to introduce about the wholesale re-evaluation of integrity management procedures following
 26 the San Bruno rupture" should not open the door. *Id.*

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1 The Court has issued lengthy rulings on the parties' *in limine* motions. If PG&E goes beyond
2 those rulings, it may indeed open the door. The Court should decline to give a premature ruling on an
3 incomplete record. If the government believes that defendant has opened the door, it will timely raise
4 the issue with the Court.

5 **4. The Court Should Deny PG&E's Untimely Request to Exclude CPUC Data
6 Responses and Strike Related Testimony**

7 PG&E made statements in the form of Data Responses to the CPUC, among others. Many of
8 these statements concede elements of the charged offenses (such as failure to integrate leak data, among
9 many other things). These are nonhearsay statements of a party opponent. FRE 801(d)(2). While they
10 are self-authenticating, given the CPUC's certification that they are publicly filed records, FRE 902(4),
11 they have been admitted through witnesses who recognized them as PG&E Data Responses. And they
12 are highly relevant to the elements of the charged offenses. Admission of PG&E's own statements to
13 the CPUC about the elements of the charged offenses does not run afoul of any order of this Court.

14 **C. The Court Should Deny PG&E's Unauthorized Motion to Strike (Dkt. 734) for Reasons the
15 Government Will Address at Today's Hearing, if the Court Requests**

16 The Court has not authorized PG&E to file a motion for reconsideration of the Court's prior
17 evidentiary rulings regarding Manegold's testimony, or to raise untimely objections. The government
18 does not have adequate time to file a written response to this 18-page motion, in addition to the other
19 unauthorized motion. If the Court requests a response, the government will give one orally at this
20 afternoon's 4:00 p.m. hearing.

III. CONCLUSION

For the above reasons, as well as those that the government will present at this afternoon's hearing, should the Court request, the Court should deny PG&E's motions.

Dated: July 11, 2016

Respectfully submitted,

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/s/
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